IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE ELEVENTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE ELIPE DHARMA RAO

WRIT PETITION NO : 13431 of 2005

Between:

P. Yousuf Ali Khan, S/o Mohammed
R/o D. No. 7/637, Chilakala Bhavi Street, Kadapa Town

..... PETITIONER

AND

1. The State of A.P., rep by Principal Secretary Department of Panchayat Raj, Secrtariat, Hyderabad
2. The District Collector, Kadapa District
3. The Mandal Revenue Officer, Chinthakommadinne Mandal, Kadapa District
4. Ellaturu Siddaiah S/o Chinna Siddaiah, Padigalapalle Village, Chinthakommadinne Mandl, Kadapa District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ, order or direction, more particularly one in the nature of writ of Certiorari, calling for the records leading up to and inclusive of Memo No. 1673/RD-IV/A2/2004-3 dated 22-03-2005 and also the consequential memo in R.Dis (H4) 2465/03 dated 16-05-2005 and quash the same as illegal, contrary to the provisions of A.P. Water, Land and Trees Act, 2002 (Act No. 10 of 2002).

Counsel for the Petitioner:MR.S.V.BHATT

Counsel for the Respondent Nos.1 to 3: GP FOR PANCHAYAT RAJ & RURAL DEV.

Counsel for respondent No.4: Sri D.Kodanda Rami Reddy

The Court made the following :

O R D E R:

This writ petition is filed seeking to call for the records leading up to, inclusive of Memo No. 1673/RD-IV/A2/2004-3 dated 22-03-2005 and the consequential memo issued in R.Dis.No.(H4) 2465/03 dated 16-05-2005, to declare the same as illegal

and contrary to the provisions of A.P. Water, Land & Trees Act, 2002 (Act No. 10 of 2002) and also to quash the same.

It is the case of the petitioner that he is the owner and possessor of an extent of Ac 2.64 cents in S.No.469 of Kolumulapalli Village of C.K.Dinne Mandal, Kadapa District. On the northern side of the said land, S.No.468 is situated. From the year 1999 onwards, the petitioner and his brother are rearing teak trees in S.No.469, by erecting a bore well. As the matter stood thus, respondent No.4 herein dug another bore well at a distance of seven meters from the existing well of the petitioner. With the result, the water level in the borewell of the petitioner has fallen drastically. On 04.08.2002, he submitted a petition before the Mandal Revenue Officer to stop the activity of 4th respondent in digging a bore well and seize the same and also other electrical appliances installed in S.No.468. The third respondent-Mandal Revenue Officer, Kadapa enquired into the matter and passed an order, dated 26.07.2003, holding that 4th respondent failed to apply for permission from the Mandal Level authority to dig a bore well or to drill new bore wells in his own patta land and thereby directed 4th respondent to close the bore-well within a period of seven days from the date of receipt of a copy of the said order or else the electrical appliances, etc., installed in his land will be seized. Against that order, fourth respondent filed W.P.No.5192 of 2003 before this Court and the same was disposed of by this Court directing the competent authority to investigate into the matter and pass necessary orders. Aggrieved by the same, the fourth respondent preferred an appeal before the second respondent and the same was also dismissed with an observation that the drilling of bore well in S.No.468 of Kolumala Palli by the fourth respondent is illegal. Against the said order, the fourth respondent preferred a review before the first respondent. On 22.03.2005 the first respondent passed orders to the following effect:

> *"The attention of the Commissioner, Rural Development is invited to the reference cited and he is informed that on consideration of full facts of the case Government had ordered to allow both the parties i.e.,*

E.Siddaiah, S/o. Chinna Siddaiah of Padigalapalle Village of C.K.Dinne Mandal and Smt.Mahabub Khathoon, w/o. late P.Liyakhath Ali Khan, D.No.7/637, Chillalabavi Street, Cuddapah, to utilize their respective bore wells without further litigation.

The orders of the M.R.O., C.K.Dinne issued vide Proc.No.B/249/2002 dated 26.7.2003 and the proceedings of the District Collector No.H4/2465/2003, dated 17.01.2004 seizing said bore well were quashed".

It is seen from the order dated 22.03.2005 of 1st respondent that he passed orders contrary to the provisions of Section 33, Explanation-5 of the Andhra Pradesh Water, Land & Trees Act, 2002 (Act No.10 of 2002) Section 33, Explanation 5 of the Act reads as follows:

"Save as otherwise provided in sub-section (1), every order made by the Authority in appeal or otherwise may be reviewed by the Government and the Government may advise the Authority to reconsider the order and upon such advice, the Authority may pass orders after consideration and such orders passed shall be final and binding and shall not be reviewed."

Instead of giving advice to the authority, 1st respondent passed orders by striking down the orders passed by the appellate authority. Hence, I am of the opinion that the order passed by 1st respondent in striking down the orders of the Mandal Revenue Officer dated 26.07.2003 and also the order of the Collector, dated 17.01.2004 is bad in law.

Hence, the order under challenge is set aside. However, it is open for the District Collector to reconsider the matter. The matter is remitted to the second respondent-Government for passing appropriate orders in accordance with Section 33 read with Section 27, Explanation 5 of the Act.

The writ petition is accordingly allowed. No costs.

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E.DHARMA RAO J.,

Dt. 11.07.2005

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To

1. The Principal Secretary, Department of Panchayat Raj, Secrtariat, State of A.P., Hyderabad

2. The District Collector, Kadapa District

3. The Mandal Revenue Officer, Chinthakommadinne Mandal, Kadapa District

4. 2 C.Cs to the G.P. for Panchayat Raj & Rural Development, High Court of A.P., Hyderabad (OUT)

5. 2 C.D.Copies.